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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5848 OF 2005

Dilip Raghunath Patil & Ors. ... Petitioners

Vs.

Eknath Ganapati Patil
(Now deceased throuh heirs)
1A. Shalan Eknath Patil & Ors. ... Respondents

Mr. G.S. Godbole with Mr. A.J. Kenjale for the petitioners.

None for the respondents.

CORAM: SMT. RANJANA DESAI, J.

DATED: 19TH SEPTEMBER, 2005.

P.C.:-

1. The petitioners are the original defendants. The plaintiffs filed a suit for declaration that the plaintiffs and the defendants have 1/2 share each in the suit properties and for perpetual injunction restraining the defendants from interfering with joint possession of the plaintiffs over the suit properties. In the alternative, there was a prayer for equal partition and possession of the suit properties. According to the plaintiffs, the suit properties are ancestral properties of Joint Hindu Family of the plaintiffs and the defendants. The suit was decreed on 21/9/1994. It was held that the plaintiffs are entitled to 1/2 share in the suit properties. The defendants filed Regular Civil Appeal No.487 of 1994 in the District Court at Satara.

On 11/4/2005, the defendants filed an amendment application saying that they may be permitted to amend the written statement. The lower appellate court rejected the said application and, hence, this writ petition.

2. I have heard Mr. Godbole, the learned counsel appearing for the petitioners. He has taken me through the amendment application. By the amendment, the defendants are seeking to introduce three points. According to the defendants, the plaintiffs amended the plaint and gave Gat numbers of the suit land. However, there are discrepancies between the said Gat numbers, their areas and measurements. The survey numbers mentioned in paragraph 1A of the plaint and the Gat numbers do not match. On account of this, there will be technical difficulty which will be misused by the defendants and, therefore, the suit may be dismissed. The defendants want to add this to the written statement.

3. The defendants further want to add that the plaintiffs' sister Malan's heirs were not joined as parties to the suit and, therefore, the suit suffers from non joinder of parties. Lastly, the defendants want to add that they have paid considerable amount for certain parts of the suit lands. The plaintiffs have not paid any amount and, as such, their claim in respect of those properties is not tenable.

4. In my opinion, the amendment application is rightly rejected. The suit is of the year 1980. It was decreed in 21/9/1994. The defendants filed appeal in 1994. The amendment application was filed by the defendants on 11/4/2005. This delay, in my opinion, reflects on the bonafides of the defendants.

5. The reason given for not filing the amendment application earlier is that the defendants are agriculturists and they are not aware of the procedure. It is contended that the previous lawyer did not inform them about the discrepancies and the new lawyer pointed out the discrepancies to them. This argument is not acceptable because the defendants had raised objection about the alleged discrepancies in the description of the suit properties pursuant to which the plaint was amended and new description of the suit properties was given. Thereafter, the defendants did not object to it till 11/4/2005 when they chose to make the amendment application in the appeal. Similarly, as regards non joinder of the parties, the objection was taken in the trial court. Accordingly, the plaint was amended. Thereafter, no objection was raised till 11/4/2005 when the present amendment application was filed. So far as the contention that the plaintiffs have spent money on certain lands is concerned, such a belated objection cannot be allowed to be raised at the appellate stage. If it is a monetory claim, the defendants may, if they are so advised and if it is legally permissible, adopt

such remedy to get back the money spent by them. The lower appellate court has rightly rejected the amendment application. Petition is rejected. The learned counsel for the petitioners contended that they may be permitted to urge these points in the appeal. If these points are urged, the lower appellate court should deal with them as it deems fit.

6. All concerned to act on the authenticated copy of this order.

(SMT. RANJANA DESAI, J.)